

chosen some other mechanism “under section 112” in regulating power plant mercury and all the other HAPs emitted by the industry. What is your position on that precedent?

WLW: With respect, I do not understand this question.

37. Do you agree that the EPA’s recent consideration of the costs of the Mercury and Air Toxics Rule shows that the agency has met the “necessary and appropriate” criteria Congress provided under 112(n) to direct the EPA to regulate power plant mercury (and other air toxic) emissions under Section 112, and more specifically under Section 112(d)? If not, why not?

WLW: If confirmed, I likely will be involved in assessing this question. I cannot prejudge the outcome.

38. The Edison Electric Institute (EEI), the association that represents all U.S. investor-owned electric companies, has told my staff that, to their knowledge, about five facilities received an approval from the EPA to operate for up to an additional year, which was through April 2017. According to EEI, to their knowledge all of their member companies have fully implemented the Mercury and Air Toxics Standard Rule. EPA staff has reported to my staff something similar. The Mercury and Air Toxics Rule protects our children from harmful mercury and air toxics pollution; and by industry accounts is already being met with technology that is already bought, paid for and running on almost all our power plants.
- Do dispute reports that nearly all covered facilities are already in compliance with the Mercury and Air Toxics Standard? If so, please explain.
 - According to a recent report by Bloomberg New Energy Finance Report and the Business Council for Sustainable Energy, “consumers now pay 3% less per kilowatt-hour for electricity than in 2007.”¹⁷ This means the near universal compliance of the Mercury and Air Toxics Rule has been achieved without significant impacts to electricity reliability or affordability, in fact electricity prices have gone down. Do you agree? If not, why not?
 - Even though industry has achieved near universal compliance with the Mercury and Air Toxics Standards and electricity prices have gone down, not up, Administrator Pruitt is currently reviewing whether it is “appropriate and necessary” to issue the standards in the first place. Do you agree that the EPA should be conducting this review, if so, why?
 - If the EPA determines the agency has not met the “necessary and appropriate” criteria found in Section 112(n), and revokes the Mercury and Air Toxics Rule, what does that mean for all the pollution control technology that has been bought, paid for and running on our power plants helping the industry be in full compliance of the rule?
 - When you were last at the EPA, or after, do you know of any instances when a power plant bought and installed air control technology and decided not to run the technology? If so, please explain the instance. Please include in your explanation

¹⁷ <http://www.bcse.org/wp-content/uploads/2017-Sustainable-Energy-in-America-Factbook-Executive-Summary.pdf>

if there were any impacts to downwind states or to air pollution levels.

WLW: If confirmed, I likely will be involved in assessing the question of how to appropriately respond to the US Supreme Court's remand of the MATS "appropriate and necessary" determination. I cannot prejudge the outcome of that assessment. I will note that MATS imposed substantial costs on electric power generators. The fact that power prices have declined in recent years does not necessarily mean that MATS did not impose substantial incremental costs.

39. In a 2016 Law 360 article, you are quoted as saying, "The reason this [the Mercury and Air Toxics Standards Rule] was such a big issue for us is because by EPA's own analysis, if you look at the benefits generated by the hazardous air pollutant reductions this rule would achieve, the costs vastly outweigh the benefits. So from our perspective, it's a regulation that made no sense and wasn't justified."¹⁸ In April 2017, the EPA asked the D.C. Circuit Court of Appeals to delay oral arguments scheduled the Mercury and Air Toxics Standards (MATS) as it reviews the rule.

- a. It is clear from this statement you already have a formed view of the validity of the Mercury and Air Toxics Standard going into the agency. Will you commit to this Committee that you will recuse yourself from the review and any possible rewriting of the Mercury and Air Toxics Rule? If not, why not?
- b. Do you continue to believe the Mercury and Air Toxics Standards is a regulation that made no sense and wasn't justified? If so, why?

WLW: The quantifiable monetized benefits of the HAP reductions predicted to occur under MATS measured only a few million dollars. I understand that EPA has recalculated the benefits attributable to MATS in response to the Supreme Court remand. I am not familiar with the new estimates. If confirmed, I intend to consider them objectively.

40. Will you commit, that if confirmed, you will not act to weaken the Mercury and Air Toxics Standards, if not, why not?

WLW: I cannot prejudge any decision that might be made by EPA if I am confirmed.

41. This year, you represented the American Petroleum Institute as an intervenor in defense of Administrator Pruitt's 90-day stay of oil and gas pollution standards, which the D.C. Circuit found violated the Clean Air Act. In my office, you refused to recuse yourself from participating in this rule, is that still true and how do you justify that, if confirmed, you will come into the EPA as impartial regulator as it relates to this issue? Do you agree with the court's decision, and why not?

WLW: Comprehensive rules of ethics govern the transition from private practice to government service. If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

¹⁸ <https://www.law360.com/articles/742955/environmental-group-of-the-year-hunton-williams>

42. Section 109 of the Clean Air Act is very clear. It requires EPA to review the NAAQS for six common air pollutants including ground-level ozone, particulate matter, sulfur dioxide, nitrogen dioxide every 5 years. The Clean Air Act requires EPA to set these standards that "are requisite to protect the public health," with "an adequate margin of safety," and secondary standard necessary to protect public welfare.
- If confirmed, will you continue to hold to the five-year National Ambient Air Quality Standards review time period that the Clean Air Act requires of the EPA?
 - The science was clear that the 2008 ozone standard was not protecting public health, so EPA was required to Act. Is that not your understanding of the Clean Air Act?
 - If confirmed, will you commit to not further delay the implantation of the 2015 ozone NAAQS? If not, why not?
 - Do you agree with Justice Scalia's opinion in *Whitman v. American Trucking Associations* that it is "fairly clear that [the Clean Air Act] does not permit the EPA to consider costs in setting the standards" and if so, will you commit not to include consider costs when setting the National Ambient Air Quality Standards? If you do not agree, why not?

WLW: If confirmed, I will endeavor to meet all statutory deadlines. I am not familiar with the record for the 2015 ozone NAAQS decision, so cannot comment on the decision to change the standard. I respect all US Supreme Court decisions.

43. In 2006, while you served as Acting Assistant Administrator for Air, the EPA proposed to eliminate lead as a criteria pollutant under the Section 109 Clean Air Act National Ambient Air Quality Standard (NAAQS) process. Did you have any involvement in this proposal? If so, please explain.

WLW: Yes, I was involved in developing that proposal. CAA § 108(a)(1)(B) states that ambient levels of a criteria pollutant should "result[] from numerous or diverse mobile or stationary sources." Information at the time indicated that there were few industrial sources of lead emissions and that lead emissions from mobile sources had been virtually eliminated. The proposal asked for comment on whether lead continued to meet the § 108(a)(1)(B) criterion.

44. Like you, I am an avid runner. In Delaware during the summer, we often have code orange days warning about the high levels of ozone for that day. Much of Delaware's ozone pollution is coming across the state boundary from upwind states.
- Can you describe how high levels of ozone could damage my lungs if I were to take a long run during a code orange day?
 - Do you agree that ground-level ozone is a dangerous pollutant that causes respiratory and cardiovascular harm? If not, on what basis do you disagree?
 - If confirmed, how would you direct states to work together to reduce ozone pollution?

WLW: Inhaling too much ozone can cause a wide range of adverse cardiovascular effects. CAA §§ 110(a)(2)(D) and 126 are designed to address interstate transport (i.e., emissions from upwind states that significantly contribute to downwind nonattainment).

45. Clean Air Act section 110(a)(2)(D)(i)(I), also known as the “Good Neighbor” provision, requires that state implementation plans to address air pollution “contain adequate provisions prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard.” Under this provision of the Clean Air Act, “[w]henver the Administrator finds that the applicable implementation plan for any area is substantially inadequate . . . to mitigate adequately [] interstate pollutant transport . . . or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.”
- a. Do you support the “Good Neighbor Provision” in the Clean Air Act and agree that this provision does not “encroach upon state sovereignty”? If not, why?
 - b. If confirmed, do you commit to fully apply and enforce the Good Neighbor provision?

WLW: CAA § 110(a)(2)(D) describes one of many elements that must be included in an approval State Implementation Plan. My hope is that more states address this obligation in the first instance so that US EPA does not need to make findings of substantial inadequacy. If confirmed, my goal is to faithfully implement all aspects of the Clean Air Act.

46. Currently, under the Clean Air Act section 110(a)(2)(D)(i)(I), also known as the “Good Neighbor” provision, Delaware has sent four petitions to the EPA that identify facilities in other states that are emitting air pollution that are significantly contributing to Delaware’s air quality and impacting Delaware’s ability to maintain or be in attainment for the 2008 national ambient air quality standards (NAAQS) for ozone and the 2015 ozone NAAQS. The petitions are for: 1) Brunner Island facility's electric generating units located near York, Pennsylvania; 2) Homer City Generating Station's electric generating units located in Indiana County, Pennsylvania; 3) Harrison Power Station's electric generating units located near Haywood, Harrison County, West Virginia; and 4) Conemaugh Generating Station's electric generating units located in Indiana County, Pennsylvania. In addition, Maryland has filed a petition that requests EPA make a finding that 36 electric generating units located in the states of Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 and the 2015 ozone NAAQS in Maryland. The EPA has granted itself six months extension on every petition and has done nothing after that. All of the extensions have long since expired.
- a. If confirmed, will you commit to promptly act on Good Neighbor petitions so states, like Delaware and Maryland, can protect their citizens from upwind

- pollution in neighboring and distant states? If not, why not?
- b. If confirmed, will you support, defend and enforce EPA's Good Neighbor provisions to address air pollution that crosses state borders? If not, why not?
 - c. In some of these situations, like the Harrison Power Station near Haywood in West Virginia, the power plant in question has the needed technology on the facility to help reduce ozone pollution in downwind Delaware and West Virginia ratepayers are already paying for the technology, but the pollution control isn't running. If confirmed, what will you do to ensure pollution control technology already on facilities runs to ensure downwind states have clean air?
 - d. If confirmed, will you fully implement the Cross State Air Pollution Rules?
 - e. If the Mercury and Air Toxics Rule is revoked, do you expect there will be an increase in upwind ozone and particulate pollution and have an impact on downwind states? If so, please explain. If not, why?

WLW: I think your question relates to CAA § 126 and not to § 110(a)(2)(D). I am not familiar with the specific petitions described in this question. But, I will note that CSAPR and the CSAPR update rule were intended to address interstate transport under § 110(a)(2)(D), such that there should not be a need or justification for § 126 petitions addressing the same plants, pollutants, and standards. If confirmed, I will endeavor to meet all CAA deadlines and my goal will be to faithfully implement all aspects of the CAA.

47. Just last month, you argued against an Obama Administration Occupational Safety and Health Administration indoor air rule that protects construction workers against silica dust, a type of dust that is linked to cancer and lung disease. During your arguments, you are quoted as saying, "People are designed to deal with dust — people are in dusty environments all the time, and it doesn't kill them,"¹⁹ The American Industrial Hygiene Association has stated that delaying the full enforcement of this rule will put – and this is their words, quote "2.3 million workers at greater risk to exposure, especially the construction industry — the backbone of our economy"
- a. Please provide the scientific studies that provided the basis for your argument in this case.
 - b. When you stated "people are designed to deal with dust," what did you mean by that statement?
 - c. When you were last in the EPA, did you ever work on a rule was deemed later to ignore all of the science dealing with particle matter pollution?
 - d. Do you agree that there is robust science linking small particle pollution to negative health impacts, even death? If so, why is the science here different than for silica pollution?

WLW: The silica case dealt with the unique toxicological properties of silica and not with the pollutant "particular matter" that is regulated by EPA. The quote in this question was taken out of the context of a broader argument related to the question of whether there is an exposure threshold for respirable silica below

¹⁹ <https://www.eenews.net/greenwire/stories/1060061731/search?keyword=silica>

which significant adverse health effects should not be expected to occur. The silica case remains an active matter and I am not authorized by my clients to say more.

48. Do you agree with President Trump's decision to withdraw the United States from the International Paris Climate Accord? If so, please explain.

WLW: President Trump is the Nation's Chief Executive. I believe it was within his authority to withdraw. I respect his decision.

49. In part of his justifications for withdrawing from the Paris Climate Agreement, President Trump stated the Paris Accord could, "cost America as much as 2.7 million lost jobs by 2025 according to the National Economic Research Associates (NERA)."²⁰ This economic statistic and others linked to the NERA study were also distributed in White House materials as reasons the President was deciding to withdraw from the Paris Accord. Soon after the President's speech, NERA stated, "In a set of talking points distributed by the White House in conjunction with its announcement of the US withdrawal from the Paris Agreement, the Trump Administration selectively used results from a NERA Economic Consulting study, "Impacts of Greenhouse Gas Regulations on the Industrial Sector." ... Use of results from this analysis as estimates of the impact of the Paris Agreement alone mischaracterizes the purpose of NERA's analysis, which was to explore the challenges of achieving reductions from US industrial sectors over a longer term. Selective use of results from a single implementation scenario and a single year compounds the mischaracterization."²¹

- a. In light of the NERA statement, do you think the President misspoke when he wrongly cited information from the NERA study in his Paris speech? If not, why not?
- b. If confirmed, will you commit that you will not distort the NERA study – or any other economic study - to justify the U.S. withdrawing from the Paris Climate Accord or to justify the elimination or delay of climate policies?
- c. After the President's Paris Climate Accord speech, MIT's Joint Program on the Science and Policy of Global Change issued a statement stating the President's characterization of their analysis of the Paris Accord to be misleading.²² If confirmed, will you commit that you will not distort the climate science studies to justify the U.S. withdrawing from the Paris Climate Accord or to justify the elimination or delay of climate policies?

WLW: I am not familiar with the NERA study, so I cannot assess NERA's comments. If confirmed, my goal would be not to "distort" anybody's statements.

50. In a Law360 interview, you were asked, "What is the most challenging case you have worked on and what made it challenging?" You responded, "Without a doubt, it would

²⁰ <https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord>

²¹ <http://www.nera.com/news-events/press-releases/2017/nera-economic-consultings-study-of-us-emissions-reduction-policies.html>

²² <http://news.mit.edu/2017/mit-issues-statement-research-paris-agreement-0602>

be Massachusetts v. EPA. I was at the EPA at the time, working as counsel to the assistant administrator for air, Jeff Holmstead.”²³ Please explain in detail, what your involvement was while in the EPA regarding regulations that led to, and the agency’s defense of the Massachusetts v. EPA case.

WLW: There were no regulations that led to the Mass v EPA decision. The decision under review was EPA’s denial of a citizen petition asking EPA to regulate GHG emissions from motor vehicles. OAR was responsible in the first instance for preparing the proposed and final denial. OAR staff – including myself – provided support to the government litigation team while the case was pending in the DC Circuit and the US Supreme Court.

Senator Cardin

51. On December 15, 2016, EPA extended by six months the deadlines to respond to petitions submitted by the state of Maryland under section 126 of the Clean Air Act. The petition from Maryland requests that EPA make a finding that 36 electric generating units located in the states of Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 and the 2015 ozone NAAQS in Maryland. On September 27, 2017, the State of Maryland filed a complaint in the United States District Court of the District of Maryland against the EPA because of the lack of response in regard to the 2016 Good Neighbor petition.

Will you commit to urge the EPA to approve the petition and enforce the air pollution controls already in place in Maryland at upwind out-of-state facilities that directly impede efforts to attain and maintain federal health-based air quality standards in Maryland?

WLW: I cannot commit at this time to take any action for which I might be responsible if confirmed to be AA for OAR. I will note that CSAPR and the CSAPR update rule were intended to address interstate transport under § 110(a)(2)(D), such that there should not be a need or justification for § 126 petitions addressing the same plants, pollutants, and standards. If confirmed, and if the issues have not yet been resolved, I will look closely at the intersection of Maryland’s § 126 petition with the CSAPR rules.

Senator Duckworth:

52. The Renewable Fuel Standard (RFS) program passed Congress with broad bipartisan support and was signed into law by President George W. Bush because it strengthens our nation’s energy independence and security. The RFS supports rural communities and American farmers, while reducing greenhouse gas emissions. In my home State of Illinois alone, the RFS has helped create 4000 jobs and more than \$5 billion in economic impact.

²³ <https://www.law360.com/articles/427231/q-a-with-hunton-williams-bill-wehrum>

I am concerned Administrator Pruitt, who reassured Congress that he would execute the program as Congress intended, will break his promise and implement the law in such a way as to limit or cap the growth in renewable fuels – directly violating the RFS program’s statutory goals to increase American energy independence and security through increased production of biofuels. As the U.S. Environmental Protection Agency (EPA) has repeatedly affirmed, any policy that decreases or limits growth in biofuels is inconsistent with the statutory goals that Congress enshrined in the law.

Do you believe that Congress intended the RFS to promote long-term growth in all biofuels fuels, including cellulosic ethanol? If confirmed, will you commit that EPA will issue Renewable Volume Obligations that increase production of renewable fuels across the board?

WLW: The RFS clearly was intended to promote the growth of a wide range of biofuels, including cellulosic ethanol. I cannot commit at this time to take any action for which I might be responsible if confirmed to be AA for OAR. If confirmed, my intention is to faithfully implement all aspects of the CAA, including the RFS.

53. During your nomination hearing you stated that you will seek guidance from EPA ethics officials on whether or not you should recuse yourself from issues for which you have previously been engaged in. However, as a regulator and a public servant, you can and should use your own discretion on recusal to avoid even the appearance of conflict of interest.

If confirmed, will you commit to recusing yourself on any issue related to biofuels or the renewable fuels standard given your past work on behalf of industry interests? What other steps will you take to guarantee that your financial and political interests do not influence your work on the RFS?

WLW: Comprehensive rules of ethics govern the transition from private practice to government service. These rules address both real conflicts and appearances of impropriety. If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

54. Will you submit for the record a full list describing any action you performed in your professional career related to the RFS program and identify the client or clients on whose behalf you were acting for each action?

WLW: I was counsel of record on three cases related to the RFS (principal clients are included in parentheses): (1) a challenge to EPA’s E15 waiver (API and the Grocery Manufacturers Association); (2) a challenge to EPA’s misfueling mitigation rule (API); and (3) a challenge to Minnesota’s B10 mandate (API, the Auto Alliance, the American Fuel and Petrochemical Manufacturers). I also was responsible for RFS implementation during my prior tenure at EPA.

55. The Mercury and Air Toxics Rule, or MATS, is an EPA success story about protecting our most vulnerable – our children. After decades of delayed action, EPA implemented the MATS rule to protect our children and our pregnant women from our country's number one source of unregulated mercury and other air toxic pollution: power plants.

Today, EPA says very few power plants in the country are not meeting the MATS pollution reduction timelines. Dr. Goldman, a world-renowned epidemiologist, pediatrician and Dean of the School of Public Health at George Washington University, testified earlier this year that we are seeing the public health benefits of MATS faster than predicted. Simply put, compliance for industry has been easier than opponents of this rule predicted and children are better protected than doctors expected – a real win-win that would never have occurred had corporate special interests prevailed in killing this critical public health rule.

Despite these successes, you continue to lead industry lawsuits against the MATS Rule, falsely claiming that EPA has yet to prove it is appropriate and necessary to regulate mercury and air toxic emissions from power plants, a decision made almost two decades ago. You have argued that the price of our children's mental development is worth less than running pollution control technology that is already bought, paid for and running on our power plants.

How can you assure us you will be impartial – you will choose our children over industry - when it comes to the Mercury and Air Toxics rule? How can you assure the American public that you will do the right thing to protect the children of Illinois and the children of all Americans?

WLW: Your question is incorrect in two respects. First, I do not “lead industry lawsuits against the MATS Rule.” I was not counsel of record in the challenges to MATS and am not counsel of record in challenges to EPA's renewed “appropriate and necessary” finding. Second, industry petitioners in the MATS case did not make “false claims” related to the “appropriate and necessary” finding. In fact, the US Supreme Court determined that that finding was unlawful, which vindicated the petitioners' claims in this regard. Having said that, I have a deep interest in protecting public health and the environment, including children's health.

56. As you know Administrator Pruitt, like Secretary Zinke and former Secretary Price have spent millions of dollars combined flying on private jets across the country. This is a gross waste of taxpayer dollars.

Yes or no, as a taxpayer, do you approve of Administrator Pruitt's travel practices on the public dime, and will you commit to utilizing commercial flights in your position?

WLW: I am not familiar with Administrator Pruitt's or Secretary Zinke's travel history, so cannot speak to this aspect of your question. Also, there are times when taking non-commercial flights is appropriate or necessary (e.g., if the President were to invite me to fly with him on Air Force One, I will not decline and take commercial instead).

Senator Ernst:

57. Administrator Pruitt has made engagement with rural America a priority and he has expressed particular concern over how EPA regulations, such as the Waters of the United States (WOTUS) rule, impact these local communities. In cases like WOTUS, the previous EPA did not fully analyze the costs associated with the regulation, particularly for rural communities. At the same time, the benefits of this rule, and others, were often overstated. How will you work to assure transparency when documenting the costs and benefits associated with EPA actions under your office?

WLW: Costs can be considered in setting some, but not all, Clean Air Act rules. But, even when costs cannot be considered, it is important to prepare a comprehensive regulatory impact analysis so that the full costs and benefits of a rule are known. If confirmed, I will work hard to ensure that costs and benefits are accurately assessed and appropriately considered.

58. At multiple times over the course of your career you have represented clients such as API, GMA and others in cases intended to undermine the RFS. The questions you have argued in those cases are relevant to the current RVO rule making for 2018 and 2019, as well as those statutorily required going forward. Additionally, they are relevant to the regulatory decisions related Reid Vapor Pressure waivers, biofuel pathway approval, and topics you will have oversight of, if confirmed. Given this, will you recuse yourself from RFS rulemaking, administering the program or some portions of the program if confirmed, and if you do, who will administer the RFS?

WLW: I was counsel of record in cases challenging EPA's E15 waiver, EPA's misfueling mitigation rule, and Minnesota's B10 mandate. These cases have all been decided and have no direct bearing on RFS implementation going forward. If confirmed, do not believe it will be necessary or appropriate for me to recuse myself from RFS matters, although I will continue to work with EPA ethics officials to make sure that I fully comply with my obligations.

59. If you are confirmed, will you commit to have an open door policy for all interest groups, including those representing biofuels, to ensure that their perspectives are taken into consideration by yourself, the Administrator, and the rest of political leadership at EPA?

WLW: If confirmed, I fully intend to have an open door policy on all issues.

60. Do you believe it is fair and appropriate to use only the input of parties regulated by the Clean Air Act when making regulatory decisions?

WLW: No, many parties that are not subject to EPA's rules are affected by the rules and should have the opportunity for input.

Senator Fischer:

61. Mr. Wehrum, during questioning you stated that you did not have an in depth understanding around the Renewable Fuels Standard (RFS). Were you ever counsel for any clients involved in lawsuits around the RFS or ethanol-blended fuels? Can you state what your role was in that case(s) and who you represented?

WLW: I have worked with the RFS in private practice and in my prior tenure at EPA. I was particularly familiar with the first phase RFS rules that implemented the original RFS that was enacted as part of the 2005 energy bill. The first phase rules were put in place while I was at EPA. OAR was primarily responsible for developing them. I am much less familiar with the second phase RFS program, which implemented the RFS amendments enacted as part of the 2007 energy bill. The cases I handled after leaving EPA dealt with very limited aspects of the RFS and had essentially nothing to do with the second phase program. Also, there is recent case law on EPA's RFS waiver authority that I have not analyzed. I also do not know EPA's view of the recent cases and, more broadly, its current view of its waiver authority.

62. As a follow-up, were you serving in the position you are currently nominated to serve in again during the George W. Bush Administration while the RFS1 was implemented?

WLW: As explained in my response to your first question, the RFS1 rules were developed and implemented during my prior tenure at EPA. I was involved in that effort.

63. Do you plan to recuse yourself from any items on the RFS or ethanol-blended fuels that you litigated on while in private practice?

WLW: I was counsel of record in cases challenging EPA's E15 waiver, EPA's misfueling mitigation rule, and Minnesota's B10 mandate. These cases have all been decided and have no direct bearing on RFS implementation going forward. If confirmed, do not believe it will be necessary or appropriate for me to recuse myself from RFS matters, although I will continue to work with EPA ethics officials to make sure that I fully comply with my obligations.

Senator Markey:

Mr. Wehrum, because of the Landmark 2007 Supreme Court ruling in Massachusetts v. EPA the EPA made a finding that carbon pollution poses a danger to America, known as the endangerment finding. This ruling made it possible for states like California and Massachusetts to use their Clean Air Act Authority to set higher fuel economy emissions standards for vehicles. State action combined with my 2007 fuel economy law, resulted in an auto industry approved increase of the fuel economy emissions standards to 54.5 miles per gallon by 2025. Those standards will save nearly 2.5 million barrels of oil a day by 2030, are the single largest step any nation has taken to reduce global warming pollution and will save consumers more than \$1 trillion. And the auto industry has added 700,000 new jobs since these standards began to take effect.

Administrator Pruitt in his confirmation hearing before this Committee stated that the Endangerment Finding “needs to be enforced and respected.” Administrator Pruitt also said earlier this year that “the Clean Air Act focused on mobile sources over the last several years I think has made a substantial difference with respect to GHG and CO2.”

64. Mr. Wehrum, yes or no, do you agree with Administrator Pruitt that the endangerment finding needs to be enforced and respected?

WLW: I have not discussed the endangerment finding with Administrator Pruitt, so I do not know his current views on the topic.

65. Mr. Wehrum, yes or no, do you support EPA’s continued regulation of greenhouse gases from cars under the Clean Air Act?

WLW: I believe that primary responsibility for regulating fuel economy belongs to the Department of Transportation. I believe that it is important for EPA to harmonize its actions with those of DOT.

Senator Merkley:

66. If you are confirmed as the Assistant Administrator of EPA’s Office of Air and Radiation, you will be responsible for implementing the Clean Air Act, which, according to the Supreme Court in *Massachusetts vs EPA*, EPA has the authority to regulate greenhouse gases. Therefore, your understanding of the most basic principles of climate change science will be essential to your role in the regulation of greenhouse gases. In the Intergovernmental Panel on Climate Change’s 5th Assessment Report, entitled, “Climate Change 2014 Synthesis Report Summary for Policymakers” (found here: http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf) the finding under “SPM1” that is labeled “{1}” (note that the labels {x} immediately follow the findings they refer to), states “Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems. {1}”. Do you agree with that finding?

a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW: I believe that the climate is changing and that manmade emissions are contributing to the change. I believe that amount attributable to manmade emission is not currently known with certainty. The IPCC quote is not inconsistent with these views.

67. In that same report, the finding under “SPM 1.1” labeled “{1.1}” states “Warming of the

climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen. {1.1}.” Do you agree with that finding?

- a. If you do not agree, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW: I believe that the climate is changing, as is suggested by the quote.

68. In that same report, the finding under “SPM 1.2” labeled “{1.2, 1.3.1}” states “Anthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever. This has led to atmospheric concentrations of carbon dioxide, methane and nitrous oxide that are unprecedented in at least the last 800,000 years. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are *extremely likely* to have been the dominant cause of the observed warming since the mid-20th century.” Do you agree with this finding?

- a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW: I believe that the climate is changing and that manmade emissions are contributing to the change. I do not know what is meant by “other anthropogenic drivers.” If confirmed and as necessary, I can delve into this question.

69. In that same report, the finding under “SPM 2” labeled “{2}” states “Continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks. {2}”. Do you agree with this finding?

- a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW: It is my understanding that domestic reductions in greenhouse gas emissions, such as those accomplished by EPA’s current regulatory programs, are projected to have little effect on predicted climate change.

70. In that same report, the finding under “SPM 3” labeled “{3.2, 3.3, 3.4}” states “Adaptation and mitigation are complementary strategies for reducing and managing the risks of climate change. Substantial emissions reductions over the next few decades can

reduce climate risks in the 21st century and beyond, increase prospects for effective adaptation, reduce the costs and challenges of mitigation in the longer term and contribute to climate-resilient pathways for sustainable development. {3.2, 3.3., 3.4}”.

Do you agree with this finding?

- a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW: It is my understanding that domestic reductions in greenhouse gas emissions, such as those accomplished by EPA’s current regulatory programs, are projected to have little effect on predicted climate change.

71. In that same report, the finding under “SPM 3.2” labeled “{3.2, 3.4} states “Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread and irreversible impacts globally (high confidence). Mitigation involves some level of co-benefits and of risks due to adverse side effects, but these risks do not involve the same possibility of severe, widespread and irreversible impacts as risks from climate change, increasing the benefits from near-term mitigation efforts. {3.2, 3.4}”. Do you agree with this finding?

- a. If you do not agree with this finding, please provide at least one peer reviewed study supporting your stated position.

WLW: The Trump Administration has announced its intent to reconsider the so-called “social cost of carbon,” which is an estimate of the benefit associated with each ton of GHG emissions reduced. That work is directly related to the topic of this question. If confirmed, I likely will be involved in this effort. It is inappropriate for me to prejudge the outcome of this effort.

72. In that same report, the finding under “SPM 4” labeled “{4} states “Many adaptation and mitigation options can help address climate change, but no single option is sufficient by itself. Effective implementation depends on policies and cooperation at all scales and can be enhanced through integrated responses that link adaptation and mitigation with other societal objectives. {4}”. Do you agree with this finding?

- a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW: To the degree manmade GHG emissions are contributing to climate change, I believe that emissions worldwide are contributing.

73. What are the annual emissions of greenhouse gases from power plants in the United

States?

- a. Are power plants one of the largest sources of greenhouse gas emissions?

WLW: I do not know the current level of GHG emissions from domestic power plants. Yes, they collectively are one of the largest domestic sources of manmade GHG emissions.

74. Mr. Wehrum, in your testimony, you said that human's contribution to climate change is "an open question". Please name which of these major scientific organizations have stated that human activity is the major driver of climate change.

The American Association for the Advancement of Science (AAAS)

American Chemical Society

American Geophysical Union;

American Institute of Biological Sciences;

American Meteorological Society;

American Public Health Association;

American Society of Agronomy;

American Society of Ichthyologists and Herpetologists;

American Society of Naturalists;

American Society of Plant Biologists;

American Statistical Association;

Association for the Sciences of Limnology and Oceanography;

Association for Tropical Biology and Conservation;

Association of Ecosystem Research Centers;

BioQUEST Curriculum Consortium;

Botanical Society of America;

Consortium for Ocean Leadership;

Crop Science Society of America;

Ecological Society of America;

Entomological Society of America;

Geological Society of America;

National Association of Marine Laboratories;

Natural Science Collections Alliance;

Organization of Biological Field Stations;

Society for Industrial and Applied Mathematics;

Society for Mathematical Biology;

Society for the Study of Amphibians and Reptiles;

Society of Nematologists;

Society of Systematic Biologists;

Soil Science Society of America;

University Corporation for Atmospheric Research.

WLW: My statement was not based on the views of these groups.

75. Mr. Wehrum, in your testimony, you declined to comment on the graphs I presented depicting the natural forces on observed temperature, and of greenhouse gases on observed temperature, saying you would need to see the underlying data. This website provides a clear presentation of the data, <https://www.bloomberg.com/graphics/2015-whats-warming-the-world/>, as well as an explanation of the methodology for these charts, including links to the models and data. Now that you have the time to review the methodology and data, can you please provide your own interpretation of these data sets?

- a. Do you agree with NASA's finding that human activity is the primary driver of climate change as shown by these data sets?
- b. If you do not agree with NASA's finding from these data sets that human activity is the primary driver of climate change, please explain, in detail, your critiques of these data sets, and please cite at least one peer reviewed study that informs your critique.

WLW: Given the short schedule provided for responding to these questions, and given the substantial number of complex questions, I have not had time to further investigate your graphs or the data used to prepare the graphs.

76. You responded to my question about ocean acidification with the response that you are familiar with the "allegation of ocean acidification." The definition of allegation, according to Merriam-Webster, is "1. The act of alleging something", where "alleging" means "to assert without proof or before proving", and "2. A positive assertion especially of misconduct", and "3. An assertion unsupported and by implication regarded as unsupportable". Given that NOAA has directly measured changes in the pH of the oceans, showing that ocean water has become more acidic over time, do you believe that "ocean acidification" is an assertion "without proof"?

- a. If you believe ocean acidification is an allegation, do you doubt scientists' ability to measure the pH of water?
- b. If you do not believe that "ocean acidification" is an assertion "without proof", then will you retract your use of the word "allegation" to describe ocean acidification?
- c. Scientists from both NOAA and the EPA have published information and data sets on ocean acidification, found here: <https://www.epa.gov/ocean-acidification> and here: <https://pmel.noaa.gov/co2/story/A+primer+on+pH> Can you please describe both NOAA and EPA's conclusion on the causes of ocean acidification?
- d. In your testimony, you said you would defer to EPA scientists and career staff on matters of science. Will you defer to EPA career staff on the science of climate change and ocean acidification?
- e. Please describe your current understanding of ocean acidification in detail,

and provide at least one peer reviewed study supporting your stated position.

WLW: Given the short schedule provided for responding to these questions, and given the substantial number of complex questions, I have not had time to review the sources to which you refer in this question. I have high regard for EPA career staff and executives. If confirmed, I will consider their views and advice very carefully on all matters, including climate change and ocean acidification.

77. In a recent public disclosure of Administrator Pruitt's calendar of meetings, less than 3% of his meetings were with public health and environmental advocacy organizations, whereas over 25% of his meetings were with industry representatives. Do you believe this reflects fair and balanced input from public health and environmental advocacy organizations?

WLW: I am not familiar with Administrator Pruitt's schedule, so I cannot comment on it.

78. Will you commit to a fair and balanced ratio of input from public health and environmental advocacy organizations?

WLW: Many parties that are not subject to EPA's rules are affected by the rules and should have the opportunity for input. I fully intend to have an open door policy on all issues.

Senator Sanders:

Climate Change

79. President Trump has suggested in the past that climate change is a hoax. Is the President correct? Is climate change a hoax?

WLW: I am not familiar with President Trump's statements with regard to climate change. I believe that the climate is changing and the manmade GHG emissions are contributing.

80. Do you agree with the vast majority of scientists that climate change is real, is caused by human activity, and that we must aggressively transition away from fossil fuels and toward energy efficiency and sustainable energy like wind, solar, and geothermal?

WLW: I believe that the climate is changing and that manmade GHG emissions are contributing. I cannot commit to any final actions that might be taken during my tenure at EPA, if I am confirmed.

81. Do you agree with the vast majority of scientists that the combustion of fossil fuels contributes to climate change?

WLW: Yes, the combustion of fossil fuels results in GHG emissions, which contribute to climate change.

82. If confirmed, what will you do to ensure that OAR addresses climate change?

WLW: If confirmed, I will faithfully implement the Clean Air Act, including authorities related to GHGs and climate change.

Background

83. As a lobbyist with Hunton and Williams, you have represented a host of fossil fuel and chemical companies in lawsuits, some of which are still active, against the EPA. If confirmed, you would be in charge of making sure that these industries install necessary pollution control technologies and conduct waste cleanup.

As Assistant Administrator for the Office of Air and Radiation, would you have any active conflicts of interests with these companies? If so, will you commit to recuse yourself for the full course of any matter in which any of your former clients is a party? If not, why not?

WLW: Comprehensive rules of ethics govern the transition from private practice to government service. If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

84. While serving as Assistant Administrator for the Office of Air and Radiation under President Bush, you attempted to roll back environmental protections under the Clean Air Act. These rollback attempts were eventually defeated in the Supreme Court. If confirmed, will you commit to carrying out the Office of Air and Radiation's obligations under the law, including as decided by the Supreme Court?

WLW: If confirmed, I will faithfully implement the Clean Air Act, including as construed by the US Supreme Court.

85. In your past career, you have brought suit against the EPA for its enforcement of the Clean Air Act. Can you explain why federal courts should be in the position of determining safe levels of pollution to protect the health and welfare of Vermonters, as opposed to the federal Agency whose mission it is to protect human and environmental health?

WLW: Separation of powers is a core principle embedded in the US Constitution. As applied here, US EPA has been authorized by Congress to implement the national environmental laws. The role of the courts is to determine if EPA has fulfilled its legal

obligations.

Science

86. At the EPA, science provides the foundation for Agency policies, actions, and decisions made on behalf of the American people. What should the role of science be in the development of EPA policies, rules, and regulations?

WLW: As you say, science provides the foundation for many agency policies, actions, and decisions. EPA's role is to apply science and other relevant information in implementing the law.

Most Pressing Challenges

87. In your opinion, what are the most pressing air quality challenges that deserve the attention of the EPA? What will you do at the EPA to better address these challenges?

WLW: Full implementation of the CAA § 112 air toxics program is one of the most pressing and difficult challenges facing OAR. If confirmed, this would be a priority for me and my staff.

Environmental Regulations

88. If confirmed, do you commit to upholding the goal of the Clean Air Act, which according to the EPA website is "to address the public health and welfare risks posed by certain widespread air pollutants"?

WLW: Yes.

89. The EPA has adopted many cost-effective safeguards in the past eight years that would significantly reduce the pollution that contributes to asthma in children. If confirmed, will you commit to addressing threats from air pollution to America's children?

WLW: Yes, protecting the public health requires consideration of susceptible subpopulations, such as children.

Environmental Justice

90. If confirmed, will you commit to addressing the growing environmental and economic justice issues associated with air quality?

WLW: If confirmed, I commit to working with you to promote public health and equal application of the law for all Americans.

91. If confirmed, will you commit to addressing issues of environmental justice in Native American communities and offer a voice to those most affected by the environmental

consequences of industrialization, especially in regard to resources protected by treaties?

WLW: If confirmed, I commit to working with you to promote public health and equal application of the law for all Americans, including Native Americans.

92. Latino children are twice as likely as non-Latino white children to die from asthma while, from 2012-2014, African American children had a death rate ten times that of non-Latino white children. African American children are three times as likely to suffer an asthma attack.

As Assistant Secretary of Air, will you commit to ensuring that vulnerable low-income communities and communities of color are protected from the harmful impacts of air pollution?

WLW: If confirmed, I commit to working with you to promote public health and equal application of the law for all Americans, including low-income communities and communities of color.

Senator Whitehouse:

93. You have been leading the fight against EPA air standards so it's unclear to me how you're capable of serving in this position consistent with the requirements of Executive Order 13770, "Ethics Commitments by Executive Branch Employees," otherwise known as the Trump ethics pledge. The pledge prohibits appointees from "participat[ing] in any particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients" for the first two years after their appointment. Your ethics agreement states you intend to sign the pledge. We are aware of dozens of separate air cases you've worked on for clients regulated by EPA during your time at Hunton & Williams. Further, your law firm has performed millions of dollars worth of lobbying for Exxon Mobil, Koch Companies, Southern Company, and several other companies regulated by EPA.

a) To ensure compliance with the pledge, please provide for the record all of Hunton & Williams clients, cases, regulatory matters, and issues/legislation on which its lobbied from the past two years, noting all clients with whom you've worked, cases on which you've worked, regulatory work you've done, and any issues/legislation on which you've lobbied.

b) Your financial disclosure or 278 form does not require disclosure of pro bono work. For the past two years, please provide a list of all Hunton & Williams pro bono work, including the clients, cases, regulatory matters, and lobbying, noting all pro bono clients with whom you've worked, pro bono cases on which you've worked, pro bono regulatory work you've done, and pro bono lobbying you've preformed.

WLW: [need to append case list **] I do not have a list of all particular matters involving specific parties in which Hunton & Williams is a party or represents a party. If confirmed, I intend to ascertain Hunton's involvement on a case-by-case basis before becoming involved in any particular matter involving specific parties. With regard to pro

bono, for the past two years I have done work on state “freedom of information act” laws for a non-profit charitable organization.

94. Your ethics statement suggests to me that you will be seeking waivers to ethics requirements. You may be allowed to seek a waiver, which I find troubling given your extensive history attacking clean air regulations on behalf of companies regulated by EPA.

- a. Please identify all particular matters which you believe at this time may require you to seek a waiver.
- b. For each of these matters, please state why it would be in the public interest to grant you a waiver.
- c. For any matters that you have not identified in response to this question, will you commit to not seeking a waiver from ethics requirements?

WLW: I do not have current plans to seek waivers.

95. Through documents produced from Oklahoma Open Records Act requests, we also know that Hunton & Williams staff worked with industry in key states to get other state Attorneys General on a comment letter Pruitt was leading to EPA opposing the carbon pollution standards for new power plants. Hunton & Williams staff also worked with Pruitt’s staff to discuss who to approach about signing on, and coached them on how and when to submit the comments. Which client or clients did Hunton and Williams bill for this work?

WLW: The client(s) has not authorized me to disclose this information.

96. According to a separate set of documents, some of which are marked “confidential”, Hunton & Williams arranged a Summit on Federalism and the Future of Fossil Fuels convened by then-Oklahoma Attorney General Pruitt, sponsored by the George Mason School of Law’s Law & Economics Center. Which client or clients did Hunton and Williams bill for this work?

WLW: The client(s) has not authorized me to disclose this information.

97. Hunton & Williams, directly contributed to Scott Pruitt’s campaign in 2010 and contributed over \$200,000 to RAGA and RAGA’s predecessor organization, the Republican State Leadership Committee during Scott Pruitt’s time as board chair and on the executive committee.

- a. Between November 1, 2011 and February 17, 2017, how much have you or Hunton & Williams contributed to the Rule of Law Defense Fund (RLDF)?
- b. While Scott Pruitt was Attorney General of Oklahoma, what, if any, fundraising events for Scott Pruitt did you attend?
- c. While Attorney General of Oklahoma, did Scott Pruitt ever solicit money from you or Hunton & Williams for his campaign, his Oklahoma Strong or Liberty 2.0 PACs, RAGA, or the RLDF?
- d. If yes, please describe each solicitation and how much you and Hunton & Williams

contributed as a result of each solicitation.

- e. Please provide a list of all RAGA or RLDF contributions, calls, meetings, events, or activities of yours or Hunton & Williams since November 1, 2011 and February 17, 2017.

WLW: I have not contributed to or been involved with RLDF, Administrator Pruitt's campaigns or PACs, or to RAGA. Hunton & Williams' political contributions are a matter of public record.

98. Please describe any role you or Hunton & Williams played in the establishment of or financial contributions to America Rising, America Rising Squared, Protecting America Now, and any other organizations that funded efforts to get Scott Pruitt confirmed as EPA Administrator.

WLW: I played no role in any of these efforts or organizations. I am not aware that anyone from Hunton was involved.

99. EPA Administrator Pruitt recently told CNBC that "I would not agree that [carbon dioxide's] a primary contributor to the global warming that we see." Based on the scientific findings from experts such as NOAA and statements on EPA's website, including "Carbon dioxide is the primary greenhouse gas that is contributing to recent climate change," Politifact determined that statement to be false. Do you agree with Administrator Pruitt or scientific experts regarding whether carbon dioxide is the primary greenhouse gas that is contributing to climate change?

WLW: I believe the degree to which manmade GHG emissions are contributing to climate change has not been conclusively determined.

100. In 2009, as mandated by the Supreme Court and backed by a robust scientific and technical review, the Environmental Protection Agency produced the Endangerment and Cause or Contribute Findings for Greenhouse Gases (GHGs) under Section 202(a) of the Clean Air Act. It found six greenhouse gases - carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride - "taken in combination endanger both the public health and the public welfare of current and future generations."
 - a. Do you agree with the EPA's endangerment finding? Why or why not?
 - b. Do you commit to not take any steps to narrow the scope or otherwise weaken the endangerment finding?

WLW: I have not read the endangerment finding or the record prepared in support of the finding. Therefore, I currently do not have a view. Otherwise, I cannot prejudice any decision that might be made by EPA if I am confirmed.

101. Four Republican former EPA Administrators – Bill Reilly, Bill Ruckelshaus, Lee Thomas, Governor Christine Todd Whitman – testified before EPW that climate change is real and EPA has clear authority under the Clean Air Act to curb carbon dioxide?
 - a. Do you agree that climate change is real?

- b. Do you agree that EPA has authority under the Clean Air Act to reduce carbon dioxide?

WLW: I agree that climate change is real and that EPA has limited authority under the CAA to regulate carbon dioxide emissions.

102. Industry frequently talks about compliance costs while ignoring the costs to people harmed by the effects of pollution. In Rhode Island these effects cannot be ignored as we see them through bad air days and other problems. Because Rhode Island ozone air quality issues are largely due to transported emissions from upwind states leading to ozone formation that pollutes the air and lungs of people in downwind states like mine. Over the past two years in Rhode Island, the 8-hour standard ozone standard exceeded 0.07 ppm 10 times in 2015 and 6 times in 2016.

- a. With respect to ozone, do you believe EPA should look at only the costs to industry when undertaking its regulatory impact analysis?
- b. Should the costs to families, such as children sent to emergency rooms due to asthma attacks triggered by smog, be included in the analysis?
- c. If so, should those costs be given a different weight than those claimed by industry?

WLW: Costs can be considered in setting some, but not all, Clean Air Act rules. But, even when costs cannot be considered, it is important to prepare a comprehensive regulatory impact analysis so that the full costs and benefits of a rule are known. If confirmed, I will work hard to ensure that costs and benefits are accurately assessed and appropriately considered.

103. Ozone levels in RI are strongly affected by the transport of pollutants emitted in upwind states into RI. Although RI is currently designated as an unclassifiable/attainment area for the ozone NAAQS, monitored ozone levels in the state still exceed the standard on a number of days in the summer months because of out of state pollution.

- a. What, if any steps, have you taken in your career to help reduce the transport of pollution from upwind states into downwind states like Rhode Island?
- b. If confirmed, what steps will you take to address the transport of pollutants emitted in upwind states that contribute to exceedances of the ozone standard in RI and other downwind states?

WLW: The "Clean Air Interstate Rule" was issued during my prior tenure at EPA. It was designed to address "interstate transport" (including into the State of Rhode Island) under the authority of CAA § 110(a)(2)(D). If confirmed, I intend to faithfully implement the Clean Air Act, including the interstate transport provisions.

104. According to EPA, 49% of coal units lack the most advanced NO_x controls (Selective Catalytic Reduction systems or SCR). Several units that have SCR or other NO_x emission control technology installed are not optimizing their use. For example, these six coal units have SCR installed but are not using it to optimize NO_x reductions.

In 2015, these facilities' NO_x emissions were significantly higher than 2009 because they are not using the systems they have in place to reduce NO_x.

Facilities with Increasing NO_x

Facility	NO _x Emission Increase	NO _x Rate Increase
Harrison Power Station, West Virginia	13,139 tons (277%)	0.22 lb/mmBtu (220%)
Keystone, Pennsylvania	10,594 tons (285%)	0.22 lb/mmBtu (296%)
Pleasants Power Station, West Virginia	8,734 tons (341%)	0.24 lb/mmBtu (284%)
Homer City, Pennsylvania	7,522 tons (72%)	0.20 lb/mmBtu (107%)
Montour, Pennsylvania	5,889 tons (109%)	0.24 lb/mmBtu (207%)
St. Johns River Power, Florida	4,262 tons (60%)	0.23 lb/mmBtu (142%)

- a. Why would this be the case?
- b. Do you think these facilities should be required to keep on their NO_x controls on?

WLW: I am not familiar with these particular power plants and do not know why they emit at the levels you report.

105. EPA's independent science advisers, leading medical groups like the American Medical Association, American Academy of Pediatrics, American Thoracic Society, American Lung Association, American Heart Association, and leading public-interest groups such as the NAACP called for a 60 ppb standard instead of the 70 ppb standard EPA finalized last year.

- a. What do you believe is a health-protective standard for ozone?
- b. Do you agree that one of the goals of the Clean Air Act is to set NAAQS standards to address the public health and welfare risks of NAAQS pollutants?
- c. When considering setting NAAQS limits, should cost be considered?

WLW: I am not familiar with the current science on the health effects of ozone, so I cannot comment on your question as to the appropriate level of the standard. The US Supreme Court has ruled that cost may not be considered in determining the level of a NAAQS and that a primary standard should be set at the level "requisite" to protect public health with an adequate margin of safety. I respect the court's decision.

106. According to the EPA, it has been estimated that the Clean Air Act has a history of reducing air pollution, while creating jobs. Since 1970 aggregate emissions of common air pollutants dropped 72 percent, while the U.S. gross domestic product grew 219 percent. Total private sector jobs increased by 101 percent over the same period. In 2020, EPA estimates that the standards will create the equivalent of over 104,000 new jobs including 17,000 new jobs building renewable energy facilities and over 78,000 jobs in improving demand-side energy efficiency.

- a. Do you agree that regulations under the Clean Air Act since 1970 have helped grow the economy?
- b. If not, can you provide your analysis, materials used, and people you solicited to come to this conclusion?

WLW: I am not familiar with the EPA analysis that produced these estimates. I believe that some, but not all, CAA-based regulations produce net benefits to the

country.

107. How will you separate your history representing polluters in challenging environmental protections to defending EPA's mission of protecting public health and the environment?

WLW: Comprehensive rules of ethics govern the transition from private practice to government service. If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

108. Have you heard anything to suggest that EPA may close or consolidate any Regional Offices? What is your opinion of such a proposal?

WLW: I do not know whether this is being considered and do not have an opinion.

109. During previous administrations, senior EPA managers' schedules have been available to the public and Administrator Pruitt recently started releasing his. If confirmed, do you agree to make your schedule available as well?

WLW: If confirmed, I will make my calendar available on a timely basis.

110. I found it extremely troubling that when asked about ocean acidification during your confirmation hearing, that you, a chemical engineer, said you were "aware of the allegation." The definition of "allegation" is "a claim or assertion... typically one made without proof." According to the following experts, ocean acidification is real and occurring:

National Academies of Sciences, Engineering and Medicine 2013 Review of the Federal Ocean Acidification Research and Monitoring Plan:

"The world's ocean has already experienced a 30% rise in acidity since the industrial revolution, with acidity expected to rise 100 to 150% over preindustrial levels by the end of this century. Potential consequences to marine life and also to economic activities that depend on a healthy marine ecosystem are difficult to assess and predict, but potentially devastating."

EPA 2016 Report on Climate Change Indicators in the U.S.:

"As the concentration of carbon dioxide in the atmosphere increases, the ocean absorbs more of it. Over the past 250 years, oceans have absorbed about 28% of the carbon dioxide produced by human activities that burn fossil fuels. Rising levels of carbon dioxide dissolved in the ocean negatively affect some marine life, because carbon dioxide reacts with sea water to produce carbonic acid. The increase in acidity changes the balance of minerals in the water and makes it more difficult for corals and plankton to produce the mineral calcium carbonate, which is the primary component of their hard skeletons and shells. Resulting declines in coral and plankton populations can change marine ecosystems and ultimately affect fish populations and the people who depend on them. Signs of damage are already starting to appear in certain areas."

Measurements made over the last few decades have demonstrated that ocean carbon dioxide levels have risen in response to increased carbon dioxide in the atmosphere, leading to an increase in acidity.”

NOAA Ocean Acidification Program:

“Ocean acidification is occurring because our ocean is absorbing carbon dioxide from the atmosphere, leading to lower pH and greater acidity. This is causing a fundamental change in the chemistry of the ocean.

Since the industrial revolution, the atmospheric concentration of carbon dioxide has increased from 280 to over 400 parts per million due to the burning of fossil fuels such as coal, gas, and oil, along with land use change. Ocean acidification refers to a change in ocean chemistry in response to the uptake of increasing carbon dioxide (CO₂) in the atmosphere. The world’s surface ocean is tightly linked with the atmosphere and absorbs huge amounts of carbon dioxide each year. This exchange, in part, helps to regulate the planet’s atmospheric CO₂ concentrations, but comes at a cost for the oceans and life within it; from the smallest, single celled algae to the largest whales. Were it not for ocean uptake of CO₂, atmospheric CO₂ levels would be increasing at an even greater rate than they are now.”

NOAA Pacific Marine Environmental Laboratory Carbon Program:

“Since the beginning of the Industrial Revolution, the pH of surface ocean waters has fallen by 0.1 pH units. Since the pH scale, like the Richter scale, is logarithmic, this change represents approximately a 30% increase in acidity. Future predictions indicate that the oceans will continue to absorb carbon dioxide and become even more acidic. Estimates of future carbon dioxide levels, based on business as usual (BAU) emission scenarios, indicate that by the end of this century the surface waters of the ocean could be nearly 150% more acidic, resulting in a pH that the oceans haven’t experienced for more than 20 million years.”

Do you accept the findings of these experts that:

- a. The human-caused increase in atmospheric carbon pollution is directly related to decreases in ocean pH (ocean acidification)?
- b. Oceans are currently acidifying at a rate unprecedented in tens of millions of years?
- c. Ocean acidification is damaging coral reefs worldwide, important habitats for recreation, tourism, and commercial fishing?
- d. Ocean acidification is harmful to marine ecosystems, negatively affecting fish populations and the communities who depend on them?
- e. If you do not agree with any of these statements, please identify the evidence, studies, or analyses you are relying upon to justify your position.

WLW: Given the short schedule provided for responding to these questions, and given the substantial number of complex questions, I have not had time to review the sources to which you refer in this question.

111. Since 2009, the states participating in the Regional Greenhouse Gas Initiative (RGGI) have seen carbon pollution fall by 18% while their economies grew by 9.2%. Emissions in the other 41 states fell by 4% while their economies grew by 8.8%.
- Do you agree that RGGI has developed a successful model for growing our states' economies and cutting carbon pollution at the same time?
 - Do you believe funding levels for EPA grant programs that fund state level initiatives to reduce their emissions should remain level, be increased, or be decreased?

WLW: The very low allowance prices under RGGI and the similar performance in other states suggest that RGGI is not a driving factor in these statistics. If confirmed, I will manage OAR's programs within the authorities and budget provided by Congress, including STAG grants.

112. EPA operates multiple networks to monitor compliance with the Clean Air Act's National Ambient Air Quality Standards and to track hazardous air pollutants regulated under the act. These networks include, among others, the State and Local Air Quality Monitoring Network, the National Air Monitoring Network (which targets areas of high population density with a variety of air pollution sources), Special Purpose Monitoring Stations (used for short-term studies and other purposes), Photochemical Assessment Monitoring Stations (used to measure pollutants that contribute to ground-level ozone, a harmful air pollutant), and the National Air Toxics Trends Stations.
- What is your vision for air monitoring?
 - Do you believe funding at EPA for these important monitoring networks should remain level, be increased, or decreased?
 - Under your leadership, will you push for greater inclusion of technology-based tools for compliance monitoring and implementation, including electronic reporting and additional air monitors?

WLW: Actual air monitoring data is far preferable to modeling or other forms of estimation. The question of compliance monitoring is primarily the responsibility of the Office of Enforcement and Compliance Assurance, with which I will work closely, if confirmed. With regard to budget, if confirmed, I will manage OAR's programs within the authorities and budget provided by Congress.

113. Section 105 grants provide significant funding to states for implementing the Clean Air Act requirements. EPA is proposing a new formula for how the 105 grants are distributed to each of the regional offices (and subsequently to the states). Region 1, where Rhode Island receives its funding from, will receive a smaller percentage of the total 105 funds under this revised formula. EPA is proposing an implementation approach that would limit regional losses to no more than 2.5% from each region's prior year amount. Region 1 will lose 2.5% for, at least, each of the next five fiscal years and possibly ten years, under this proposed approach. Will you commit to not implementing the new formula until and unless there is sufficient overall funding such that no Region

will see reduced funding from the prior year's amount?

WLW: If confirmed, I will manage OAR's programs within the authorities and budget provided by Congress, including STAG grants.

114. The Clean Air Act regulates air emissions from stationary and mobile sources, protecting public health and ensuring Americans have safe air to breathe. Concentrated animal feeding operations (CAFOs) may emit air pollutants in high enough quantities to subject them to CAA and other statutory requirements.
- a. Do you believe CAFOs pollute the air?
 - b. Do you believe it is important for EPA, state and local agencies, and the public to know what air quality and health risks are posed by animal feeding operations?
 - c. Will you commit to ensuring that the law is enforced with regards to CAFOs.

WLW: CAFOs emit a number of CAA-regulated air pollutants. CAFOs also are different than most other stationary sources regulated under the CAA. These differences must be carefully considered in crafting any CAA-based regulatory requirements.

115. On September 19, 2017, the EPA Office of Inspector General (OIG) released a report on EPA's attempts to develop reliable emission estimation methods (EEMs) to determine whether animal feeding operation are subject to or comply with Clean Air Act permit requirements or emission reporting requirements under CERCLA or EPCRA (Report No. 17-P-0396). On June 23, 2017, the Office of Air and Radiation agreed with OIG's recommendations and OIG has accepted its planned corrective actions. If confirmed, do you commit to ensuring EPA fulfills its commitment to implement the actions laid out in OAR's June 23, 2017 letter to OIG?

WLW: I am not familiar with the OIG report or OAR's response. If confirmed, I will take time to familiarize myself with these materials and this issue.

116. OIG's September 19, 2017 report (Report No. 17-P-0396) on animal feeding operations cited a lack of EPA agricultural air expertise and committed resources as a factor in delays in developing emission estimating methodologies.
- a. Given President Trump's proposed cuts to EPA's budget, how do you envision implementing the actions agreed to by OAR in Report No. 17-P-0396?
 - b. What is your vision for protecting public health by ensuring animal feeding operations are meeting CAA and other statutory requirements?

WLW: I am not familiar with the OIG report, so cannot comment on its findings. In my experience, OAR career staff and executives have ample experience and expertise with agricultural issues, including those arising at CAFOs.

117. Until recently, Carl Icahn served as a special advisor to the President on overhauling regulations. Carl Icahn is also a majority owner of CVR Energy which is an oil refiner that has a compliance obligation under the RFS to blend its oils with renewable fuels. Icahn's company has repeatedly benefited when he has proposed changes to the RFS that would benefit CVR and through speculation in the Renewable Identification Numbers (RINs) market. For example, in February of 2017 Mr. Icahn reportedly presented the White House with draft Executive Order language that would reform the RFS to benefit CVR energy. The same day, CVR's stock value increased by 3.5%, representing a multi-million dollar windfall to Icahn.

- a. Please describe any interactions you've had with Carl Icahn, CVR Energy, Valero, or other entities about the RFS in the past two years.
- b. Do you think it is appropriate for an Administration official like Mr. Icahn to propose making changes to EPA regulations that clearly benefit a company he owns?
- c. If you are confirmed as AA of OAR, and Carl Icahn or CVR Energy approaches you about a matter related to the RFS, do you think would be appropriate to talk with him?
- d. Will you commit to not talking with Carl Icahn about the RFS?

WLW: I have had no interactions with Carl Icahn, CVR Energy, or Valero on the RFS in the past two years. I do not recall interactions with other entities on the RFS in the past two years, although I occasionally offer implementation advice to clients on the RFS. If confirmed, I fully intend to have an open door policy on all issues, which might include meetings with both proponents and opponents of the RFS.

118. Since July, EPA has submitted two different proposals that would lower the volumes for biodiesel and renewable diesel. Congress told EPA to increase the volumes of biodiesel and renewable diesel, and both the President and Administrator Pruitt have pledged their support for the RFS. How do you explain EPA's actions?

WLW: I am not involved in EPA's decisions about RFS implementation, so I cannot explain their current thinking.

119. In your professional career you have specifically worked against the interests of biofuels and have represented the petroleum sector in multiple law suits. As Assistant Administrator how would the biodiesel and renewable diesel industries get a fair hearing from you?

WLW: Comprehensive rules of ethics govern the transition from private practice to government service. If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

120. In July, the DC Circuit Court in *ACE vs. EPA* said, EPA can't use general waive authority to regulate supply under the RFS. Yet in the most recent proposal from EPA,

EPA is proposing exactly that and is working to use general waive authority to decrease the volumes based on supply. Clearly we have billions of gallons of biodiesel and renewable diesel that qualify for the program and are ready to be produced here in the United States, in Canada and throughout the world. Isn't EPA setting itself up for another lawsuit?

WLW: I am not familiar with EPA's recent RFS proposals or on the Agency's view as to how they relate to the recent court decision.

121. The EPA has signaled its planned rejection of the proposal to change the point of obligation under the law. The Agency has yet to issue a decision. If confirmed, will you finalize and issue the Agency's rejection of this proposal, and if so, when? Have you ever expressed a view on proposals to change the point of obligation and if so, what was it?

WLW: I expressed a view on this topic when the RFS1 rules were established during my prior tenure at EPA. At that time, I supported the point of obligation that, then and now, is contained in the rules. I have not expressed a view on the possibility of changing the point of obligation. I cannot prejudge any decision that might be made by EPA if I am confirmed.

122. On September 26, the EPA issued a Notice of Data Availability that proposed to make significant, substantial changes to its proposed 2018 RVO and provided for a 15-day comment period. NODAs are generally used to provide data and supplement information in the record. In this case, the EPA has proposed to make material changes to its original proposal, offering stakeholders only 15 days to comment on something that, if adopted, would negatively impact the U.S. biodiesel industry and set the stage for unjustified reductions in perpetuity. In your experience, is this a typical use of a NODA, and can you give me another example when the EPA has used a NODA in this manner? Do you believe that 15 days is an appropriate comment period for a proposed rule under the RFS? In your opinion, is inventing a new methodology to justify a pre-determined outcome an appropriate process to apply in EPA rulemakings under the RFS?

WLW: I do not know why EPA decided to issue a NODA rather than a supplemental proposal. What matters most is whether interested parties have received adequate notice of a possible rule change. I believe the NODA provided such notice. The CAA does not specify a minimum period for public comments. I know that issuing RVOs takes a lot of work and meeting the annual schedule is always a challenge. A short comment period on a set of narrow issues may be what is needed to keep this rule on schedule.

123. Do you believe methane is a greenhouse gas? What is methane's global warming potential, and from what source does that number come?

WLW: Yes, methane is a GHG. When it established NSPS limits on methane for the oil and gas industry, EPA estimated the global warming potential of methane to be 25. *See*, 81 Fed. Reg. 35824, 35827 (June 3, 2016).

124. Is it your understanding that EPA will enforce the methane rule on a case-by-case basis? Please explain how EPA's case-by-case approach to compliance with the Methane Rule is consistent with EPA's "No Action Assurance" policy, which dates back to 1984.

WLW: I do not know what it means to "enforce the methane rule on a case-by-case basis." It was rumored that EPA might issue no-action assurance with regard to aspects of the "Quad Oa" methane rule, but I am not aware that any such document has been issued.

125. Which states have been delegated enforcement authority over the Methane Rule? What oversight and/or assistance will EPA provide these states to ensure that regulated entities are complying with the rule?

WLW: I do not know which states have been delegated enforcement authority for the Methane Rule. When such delegation is made, EPA retains authority to interpret and enforce the rule.

126. What types of reports and notifications should EPA require states with delegated enforcement authority to submit to the agency to ensure that the states are enforcing the methane rule?

WLW: The rules (such as they are) that govern delegation appear at 40 CFR Part 60 Subpart A.

127. Administrator Pruitt has been criticized for spending a disproportionate amount of his time meeting with industry and virtually no time with public-interest groups. If confirmed, will you commit to meet with and listen to all parties, including environmental and public health groups, in a balanced fashion?

WLW: If confirmed, I fully intend to have an open door policy on all issues.

128. If confirmed, do you commit to notifying the Committee of all of the email addresses you plan to use upon confirmation and within seven days of using a new email address, including any aliases or pseudonyms? Do you commit to conducting all business using official email addresses and other means and to refrain from any mediums that are outside the Freedom of Information Act's reach?

WLW: I intend to conduct all official business using my published EPA e-mail address. I do not intend to use my personal e-mail address or any pseudonym.

129. Do you believe the U.S. should remain a party to the United Nations Framework Convention on Climate Change?

WLW: The UNFCCC is a treaty. The US Department of State has primary responsibility for treaties. I defer to State on this issue.

130. Do you believe the U.S. should remain a party to the Paris Agreement?

WLW: The Paris Agreement is an international agreement. The US Department of State has primary responsibility for such matters. I defer to State on this issue.

131. If confirmed, do you commit to providing complete and accurate responses to inquiries from EPW members in a timely fashion.

WLW: [OCIR? **]

132. Do you think there should be a standardized social cost of carbon? Is the social cost of carbon greater than zero dollars per metric ton? If so, what is the most accurate social cost of carbon in 2017 and what is the best way to calculate this number?

WLW: EPA develops benefits estimates for many CAA-regulated pollutants. The “social cost of carbon” is a benefits estimate and it would be consistent with EPA practice to develop such a value. I do not know enough about the underlying data to suggest an appropriate value. It is worth noting that the global scale, long lag time, and indirect nature of the effects of GHG emissions make it particularly difficult to develop a reliable benefits estimate, as compared to other CAA pollutants, which have more direct and immediate effects.

133. A 2007 legal challenge prompted the courts to direct the government to further quantify the costs and benefits of a ton of carbon pollution in federal government rulemakings. Specifically, the U.S. Court of Appeals for the 9th Circuit agreed that in quantifying the benefit of cutting carbon pollution but admonished that the value is “certainly not zero.”²⁴ The Court asked National Highway Traffic Safety Administration to do a new rule that addressed this issue. This court decision has led the Bush and Obama Administrations to further refine a value for the SCC. Do you agree with the reasoning in this decision?

a. If no, please explain why not and how that would affect how you would approach your responsibilities.

WLW: I am not familiar with that decision. As noted above, there are many challenges to developing a reliable benefits estimate for GHGs.

134. In 2009, the Obama administration created an interagency working group (IWG) in an effort to create a governmental value for the social cost of carbon, which based its calculations on peer-reviewed economic models and expert opinions. The models included in their analysis were the Dynamic Integrated Climate-Economy (DICE)²⁵, Policy Analysis of the Greenhouse Effect (PAGE)²⁶, Climate Framework for Uncertainty,

²⁴ *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, U.S. Court of Appeals for the 9th Circuit (2007), available at <http://caselaw.findlaw.com/us-9th-circuit/1024716.html>.

²⁵ Dynamic Integrated Climate-Economy model (DICE), <http://www.econ.yale.edu/~nordhaus/homepage/dicemodels.htm>

²⁶ Policy Analysis of the Greenhouse Effect (PAGE), <http://climatecolab.org/resources/-/wiki/Main/PAGE>

Negotiation and Distribution (FUND)²⁷, and World Induced Technical Change Hybrid (WITCH)²⁸ models. The IWG was comprised of scientists and economists from the Office of Management Budget, the Council for Environmental Quality, the National Economic Council, the EPA, the U.S. Department of Agriculture, Energy, Transportation, and Treasury.

- a. Can you discuss whether you think the models used by the IWG are appropriate and credible tools for calculating the social cost of carbon?
- b. Can you comment on whether the IWG was comprised of the right governmental stakeholders and actors?

WLW: I am not familiar with the models used by the IWG. I believe it is appropriate to be inclusive in establishing a benefits estimate for GHGs.

135. On March 28, 2017, the President issued a Presidential Executive Order on Promoting Energy Independence and Economic Growth, which disbanded the IWG, withdrew the guidance it issued, and reverted to OMB Circular A-4 of September 17, 2003 (Regulatory Analysis). This in effect requires each agency to estimate the value of changes in greenhouse gas emissions resulting from regulations. Do you believe the regulatory process will be more effective and efficient in the absence of unified guidance on how to monetize the value of changes in greenhouse gas emissions?

WLW: EPA is part of a unified executive. Any benefits estimate – even if developed as part of an EPA rule – likely will be developed in coordination and conjunction with other departments and agencies.

136. Part of the social cost of carbon calculation assumes a value for discount rates. The IWG after reviewing past OMB guidance recommended using a 3% discount rate²⁹.
- a. Do you have an opinion on what the discount rate value should be when calculating the social cost of carbon?
 - b. Scientific research has found that it would be more accurate to use a declining discount rate instead of a fixed one. Do you agree that a declining discount rate would be more accurate?
 - c. Do you have an opinion on what the discount rate value should be used for inter-generational impacts?

WLW: I currently do not have an opinion on the proper discount rate.

137. Do you believe that it is appropriate for a cost-benefit analysis to consider the harm caused in other countries from pollution emitted in the United States?

WLW: The CAA has provisions that address international pollution transport. For example, CAA § 179B deals with “international border areas.” I believe that international pollution transport and effects should be addressed as specified by the Act.

²⁷ The Climate Framework for Uncertainty, Negotiations and Distribution (FUND), <http://www.fund-model.org/>

²⁸ World Induced Technical Change Hybrid model (WITCH), <http://www.witchmodel.org/>

²⁹ Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document*, pp. 15–16.

Senator Wicker:

138. As you consider policies at the EPA that affect emissions, will you consider the future uses of biomass in the U.S. as part of the power generation mix? Will you consider and institute policies related to emissions that will allow new market opportunities for American biomass and wood pellet resource?

WLW: Biomass is an important domestic source of fuel for power generation. It has been and will continue to be considered as EPA formulates policies and emissions control programs for the power sector.

139. For most of its existence, the ENERGY STAR program has been housed at EPA. Since a 2009 MOU between EPA and DOE, EPA has been administering the voluntary ENERGY STAR program on home appliances.

I am concerned about the proposals to move the ENERGY STAR program for home appliances to DOE. There is the potential that this change could result in inefficiencies and lead to additional regulatory burdens. In particular, DOE may not update specifications to incorporate evolving technologies as EPA has through the voluntary program in partnership with stakeholders.

Can you share your perspective on this issue?

WLW: ENERGY STAR is a unique and successful program. Its ongoing success highly depends on maintaining credible specifications for covered products and services. Responsibility for implementing ENERGY STAR is split between EPA and DOE. Close coordination is vital to effective program implementation. If confirmed, I intend to make such coordination a priority.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 15, 2017

VIA Fax: (202)501-1450

Email: Pruitt.scott@epa.gov and Hardcopy

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Request for Administrative Stay, Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard - Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, 81 *Fed. Reg.* 89,870 (Dec. 13, 2016); Docket No. EPA-HQ-OAR-2014-0464

Dear Administrator Pruitt:

The Texas Commission on Environmental Quality (TCEQ) respectfully requests the U.S. Environmental Protection Agency (EPA) immediately stay the effective date of EPA's final action entitled Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard - Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, published in the Federal Register on Dec. 13, 2016 (Final Rule).¹

The Governor of the State of Texas submitted recommended designations for the 2010 SO₂ NAAQS, as required under section 107 of the Federal Clean Air Act (FCAA).² In all correspondence with EPA over a three-year period,³ Texas consistently recommended EPA designate as unclassifiable all areas in Texas for which monitored data was not available.⁴ When EPA asked for additional information from States and solicited public comment to inform

¹ 81 *Fed. Reg.* 89,870 (Dec. 13, 2016)

² FCAA §107(d)(1)(A), 42 U.S.C. § 7407(d)(1)(A)

³ Letter from Governor Rick Perry to Alfredo Armendariz, Regional Administrator, U.S. EPA Region VI, June 2, 2011; Letter from Governor Rick Perry to Alfredo Armendariz, Regional Administrator, U.S. EPA Region VI, April 20, 2012; Letter from Executive Director Zak Covar to Jennifer Noonan Edmonds, Acting Director, Office of Air Quality Planning and Standard, U.S. EPA, March 18, 2013, Docket No. EPA-HQ-OAR-2012-0233

⁴ See FCAA 107(d)(1)(A); 42 USC 7407(d)(1)(A): "...the Governor of each State shall submit to the Administrator a list of all areas or portions thereof in the State designating as . . . (iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the [NAAQS] for the pollutant."

Re: Docket No. EPA-HQ-OAR-2014-0464

their designations of several areas that had yet to be designated (including the three areas subject to the Final Rule), Texas again recommended an unclassifiable designation for any areas where monitored data was not available.⁵

The Final Rule, departing from years of agency practice, rejects Texas's recommended designations for three areas: Freestone and Anderson Counties, Rusk and Panola Counties, and Titus County where monitored data was unavailable. Instead, EPA, relying on a court entered consent decree and not scientific data nor the state's recommendation,⁶ designated these areas nonattainment for the SO₂ NAAQS based on modeling data.⁷ Texas believes EPA's designations in the Final Rule were incorrect and contrary to the FCAA and has filed petitions for judicial review in the 5th Circuit and D.C. Circuit Courts of Appeal.⁸ Additionally, Texas and several states challenged entry of the consent decree upon which the Final Rule is based and have appealed the consent decree to the 9th Circuit Court of Appeals.⁹

EPA should immediately grant a stay of the effective date of the Final Rule. Section 705 of the Federal Administrative Procedures Act (APA) grants EPA authority to stay an agency order or final determination pending judicial review of such order or determination if the EPA finds that "justice so requires."¹⁰ While FCAA section 307(d) is also authority for EPA to stay the effectiveness of rules, this particular provision of the Act applies when it is reconsidering the rule to be stayed. Texas is not asking EPA to reconsider the Final Rule.

Texas is asking for a stay of the effectiveness of the Final Rule under section 705 of the APA pending judicial review of the 9th Circuit appeal and the petitions for review in the D.C. and 5th Circuits. A stay under this provision can be granted where, "at a minimum, a rational connection between [a] stay and the underlying litigation," must be articulated.¹¹

Texas and several other states intervened in the litigation that resulted in the consent decree that EPA acknowledges compelled the action taken in the Final Rule. The Federal District Court for the Northern District of California entered the consent decree over the objections of the Intervenor States and is currently on appeal to the 9th Circuit Court of Appeals. Oral arguments are scheduled for March 16, 2017. Texas and the intervenor states maintain that the consent decree was negotiated and entered without participation of the parties most affected by the designation process and the deadlines and requirements EPA must follow to make designations are beyond what is allowed under the FCAA. EPA should have taken Texas' recommendations that these three areas be designated unclassifiable. Because the Final Rule is based on a consent decree that is contrary to the FCAA, Texas has also filed challenges in the 5th Circuit and D.C. Circuits on the Final Rule.

⁵ Letter from Governor Greg Abbott to Janet McCabe, Assistant Administrator, U.S. EPA, September 18, 2015, Docket No. EPA-HQ-OAR-2014-0464; Letter from Executive Director Richard Hyde to EPA Air Docket, March 31, 2016, Docket No. EPA-HQ-OAR-2014-0464.

⁶ *Sierra Club and NRDC v. McCarthy*, No. 3:13-cv-3953-SI (N.D. Cal.)

⁷ 81 *Fed. Reg.* at 89871, "The court order required the EPA Administrator to sign a notice designating areas in a second round that contained sources meeting certain criteria no later than July 2, 2016."

⁸ *Texas and TCEQ v. U.S. EPA and Catherine McCabe*, No. 17-60088, (5th Cir.); 17-1053 (D.C. Cir.)

⁹ *Sierra Club; NRDC; EPA v. State of North Dakota et al.*, No. 15-15894 (9th Cir.)

¹⁰ 5 U.S.C. § 705

¹¹ *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 34 (D.D.C. 2012)

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Page 3
March 15, 2017

Re: Docket No. EPA-HQ-OAR-2014-0464

The Final Rule begins an 18-month clock, from the January 12, 2017 effective date, for Texas to submit to EPA source-specific attainment demonstration state implementation plans (SIPs) for the nonattainment areas in Freestone and Anderson Counties, Rusk and Panola Counties, and Titus County. The Texas attainment demonstration SIPs must meet several requirements including: emissions inventories, implementation of all reasonably available control measures (RACM), provide for reasonable further progress, modeling of attainment, enforceable emission limits and contingency measures.¹² TCEQ must develop these plans early enough to provide adequate time to accept and respond to public comments on the proposed SIPs before submitted for commission approval and submittal to EPA for review and approval. Had EPA instead designated these areas as unclassifiable, these FCAA planning requirements would not be triggered.

Unless stayed, EPA's actions will unjustifiably force Texas to immediately expend significant staff time and resources to meet the SIP submittal deadline; therefore, "justice so requires" EPA stay the effectiveness of the Final Rule (and thus the SIP clock) pending a decision in the federal circuit courts on the legality of the consent decree. Texas must quickly begin to expend precious agency resources on the SIPs, at the expense of other important SIP work. These resources will be wasted if the consent decree is overturned and EPA is directed to re-issue designations based on the recommendations from Texas.

Thank you for consideration of this request, and please contact me at (512) 239-1317 or John Minter, the attorney on this issue, at (512) 239-0663 if we can provide any further information.

Sincerely,



Richard A. Hyde, P.E., Executive Director
Texas Commission on Environmental Quality

cc: The Honorable Ken Paxton, Attorney General of Texas

¹² FCAA § 172(c), 42 U.S.C. § 7502(c)

Senate Committee on Environment & Public Works
Hearing entitled, “Hearing on the Nominations of Michael Dourson, Matthew Leopold,
David Ross, and William Wehrum to be Assistant Administrators of the Environmental
Protection Agency, and Jeffery Baran to be a Member of the Nuclear Regulatory
Commission.”

October 4, 2017

Questions for the Record for Mr. William Wehrum

Ranking Member Carper:

1. For decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law. I recently learned that Devon Energy, a strong political supporter of Administrator Pruitt’s, informed the EPA just 5 days after Mr. Pruitt was sworn in as Administrator that it was no longer willing to install air pollution technology or pay a high penalty to EPA for its illegal air emissions of cancer-causing benzene and other chemicals. We also know that Trump family casinos, hotels and golf courses have been the subject of EPA enforcement actions for violations of the Clean Air Act and Clean Water Act.
 - a. Do you agree that it is essential that in making decisions, EPA’s OAR must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?
 - b. Will you commit to restricting communications between OAR and the White House staff regarding specific matters under the authority of OAR?
 - c. Will you commit to ensuring the staff of OAR is familiar with those restrictions?
 - d. Will you commit to advising this Committee within one week if any inappropriate communications from White House staff to OAR staff, including you, occur?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

2. Recently, EPA conducted “anti-leaking” training for its employees¹. According to EPA sources, the briefing stated that “Prohibitions we will discuss do not refer to “Whistleblowing”. Agency employees have the right to make lawful disclosures to anyone, including, for example, management officials, the Inspector General, and/or the Office of Special Counsel. Employees may make disclosures to the EPA Office of the Inspector General through the EPA OIG Hotline at 888-546-8740.” This presentation evidently failed to note the rights of federal employees have to make disclosures to Congress.
5 U.S.C. § 7211, provides that: The right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of

¹ https://www.washingtonpost.com/politics/whitehouse/federal-employees-are-ordered-to-attend-anti-leaking-classes/2017/09/21/032b40d6-9edd-11e7-b2a7-bc70b6f98089_story.html?utm_term=.e2bfc5e54d95

Congress, or to a committee or Member thereof, may not be interfered with or denied. Pursuant to 5 U.S.C. § 2302(b)(8), it is a violation of federal law to retaliate against whistleblowers. That law states: Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of. ... (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation... " In addition, pursuant to 18 U.S.C. § 1505, it is against federal law to interfere with a Congressional inquiry: Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.

- a. If you are confirmed, will you commit to protect the rights of all career employees in OAR to make lawful disclosures, including their right to speak with Congress?
- b. Will you commit to communicate employees' whistleblower rights via email to all OAR employees within a week of being sworn in?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

3. In the wake of Hurricane Irma, at least 11 deaths and numerous injuries have been reported in Florida due to accidental carbon monoxide poisoning from gasoline-powered portable generators.² One additional death has also been reported in North Carolina, along with other injuries throughout the Southeastern United States.³ Many of these deaths and injuries could have been prevented had stronger safety standards been in place for portable gasoline generators. In November 2016, the U.S. Consumer Product Safety Commission (CPSC), following years of work on the issue, voted to issue a Notice of Proposed Rulemaking (NPRM) to implement a mandatory safety standard for portable generators.⁴ Since then, Administrator Pruitt and Acting CPSC Chairman Buerkle have separately opined that section 213 of the Clean Air Act precludes CPSC action.
 - a. Section 213 of the Clean Air Act is intended to regulate emissions from non-road

² <http://www.miamiherald.com/news/weather/hurricane/article174097351.html> <http://www.sun-sentinel.com/news/weather/hurricane/sfl-carbon-monoxide-deaths-20170914-story.html>

³ <http://www.charlotteobserver.com/news/article173612361.html>

⁴ <https://www.federalregister.gov/documents/2016/11/21/2016-26962/safety-standard-for-portable-generators>